



Naivasha Quarry Project Limited v Kenya Wildlife Services & 2 others (Environment and Land Case 106 of 2024) [2026] KEELC 138 (KLR) (Environment and Land) (22 January 2026) (Ruling)

Neutral citation: [2026] KEELC 138 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND CASE 106 OF 2024
MC OUNDO, J
JANUARY 22, 2026**

BETWEEN

NAIVASHA QUARRY PROJECT LIMITED PLAINTIFF

AND

KENYA WILDLIFE SERVICES 1ST DEFENDANT

**KENYA WILDLIFE RESEARCH SERVICE AND TRAINING
INSTITUTE 2ND DEFENDANT**

DIRECTOR OF SURVEYS 3RD DEFENDANT

RULING

1. This ruling is in relation to an order issued by the court on the 24th October 2023 as follows:

“This matter is adjourned at the instance of the 1st defendant in ELC 384 of 2019-Kenya Wildlife Services who is an interested party in ELCC 373 of 2021. In the meantime and prior to the issuance of another hearing date, the Director of Surveys is directed to visit the subject property in the two matters together with surveyors appointed by the parties in the two causes, identify the boundaries and make a joint report on the situation on the ground and file the said report in the next 60 days from the date hereof. The plaintiff in the lead file shall extract this order and serve it upon all the other parties for compliance. The OCPD, Naivasha shall provide security during the joint exercise.”

2. Following this direction, on the 27th February 2024, the court confirmed that the report had been electronically filed and directed the Deputy Registrar to download the same and place a physical copy in the file.



3. On the 7th May 2024, the court further directed that the signed joint report dated the 11th January 2024 be availed to all Counsel herein. A mention dated was scheduled for compliance for the 29th May 2024 on which day the state Counsel confirmed having served the Report to all counsel and undertook to effect service again to the Plaintiff's counsel in No. 384/2019 who had not received it.
4. The matter proceeded for hearing where PW1, one Mr. Onesmus Kimani Ngunjiri testified. It was thus during cross examination by Counsel Mr. Lutta Advocate for the 1st and 2nd Defendants, that it was discovered that the joint report held by Counsel was different from the report that had been produced by the PW1 as Pf exh.15 in that it contained some information that was either missing or contained in the report that the rest of the parties had. The court was informed that Counsel, Mr. Lutta had received his copy of the joint report directly from his clients wherein the rest of the parties had been supplied with their copies by the Director of Survey Mr. Rodgers Gachewa.
5. M/s. Judy Adipo a Principal Land Surveyor with KWS who was present in court and who was one of the surveyors tasked with coming up with the joint report then informed the court that the report that Counsel Mr. Lutta Advocate was supplied with was the one that reflected the true picture/ representation of their joint report.
6. Due to the glaring anomaly in the two reports the court gave directions for PW1 to be stood down wherein summons were issued for the surveyors: Rodgers Gacewa – Principal Land Surveyor – Nairobi, Judy Adipo – Snr. Principal Land Surveyor KWS and Sospeter Ohanya – Deputy Director NLC to appear in court at the next mention date to explain why there had been a glaring anomaly between the report filed in court, served upon Counsel for the Plaintiff, 3rd – 6th Defendants and the one which had been served upon Counsel for the 1st and 2nd Defendants.
7. On the scheduled day, the 10th December 2025, only two surveyors, Mr. Rogers Gacewa and M/s Judy Adipo presented themselves before court wherein the court was informed that the third surveyor Mr. Sospeter Ohanya was away on official duties. A Notice to show Cause was subsequently issued against him.
8. Mr. Rogers Gacewa acknowledged the discrepancies and sought for the court to direct that the reports be amended to correct information regarding the site visit.
9. The Court conceded to the suggestion that the surveyors amend the report to correct the discrepancies which drew strong opposition from the Plaintiff's Counsel who argued that the filed report was the only valid one. That the Defendants' version lacked official logos and had improperly included a "Kenya Gazette Supplementary Notice" which had not been availed during the site visit. He contended that amending the report now would be "opening a Pandora's box" and prejudice the Plaintiff's case.
10. The 1st and 2nd Defendant's Counsel on the other hand supported an amendment to the report stating that the same had been compiled via email exchanges rather than jointly and in person. She argued that Ms. Adipo had only added the missing institutional information and a signature for which the final filed version did not reflect all the edits that they had agreed upon.
11. Counsel representing KWS also supported an amendment to the report arguing that the surveyors ought to have referred to maps and Gazette Notices by law as envisaged in Section 39 of the [Evidence Act](#) so as to be accurate. That the omission of the Gazette Notice in the filed version was an error.
12. On the other hand, submissions by Counsel for the 4th Respondent had been that since the surveyor's carried out their tasks and made their findings, it would be improper for a party who did not agree with the report to declare such independent report as prejudicial without an alternative to amend



and produce the true reflection of the findings. He agreed with the court that the surveyors file an independent/amended report and so did Counsel for the 6th Defendant.

13. Based on the above arguments in the context of the "glaring anomaly" between the reports, I find that I cannot simply "pick" one report over the other, or strike out the report entirely (which would waste the work already done). The most probable and reasonable thing to do is to order the three surveyors to convene physically to produce a single, unified, and definitive Joint Report.
14. This is because the original court order of 24th October 2023 required a joint report. The submissions from Miss Moga and Miss Ndundu reveal that the current reports were the result of an uncoordinated "back and forth" via email, leading to a situation where different versions exist. For a report to be "joint," all experts must sign off on the exact same final draft.
15. The "Oxygen Rule" or the overriding objective of the Civil Procedure Act is to generally prioritize the "just, expeditious, and cost-effective" resolution of disputes. Relying on a report known to be disputed or incomplete (missing the Gazette Notice mentioned by the 1st and 2nd Defendants) would hinder the court's ability to find the truth so I find.
16. Under Section 39 of the Evidence Act as cited by Miss Ndundu, maps, plans, and gazette notices are relevant and therefore a surveyor must refer to official records to fulfill their mandate of "identifying a boundary, excluding the Gazette Notice just because it was not seen on the ground might make the report technically deficient.
17. I find that unlike the Plaintiff's argument that amending the report would open a "Pandora's box" and is prejudicial, on the contrary, allowing the amendment but preserving the Plaintiff's right to cross-examine all three surveyors on the discrepancies between the versions, I find will protect the Plaintiffs rights.
18. To this effect, I order that the three surveyors (Gacewa, Adepo, and Ohanya) meet in person within 21 days and prepare a unified report bearing their signatures on every page, with a clear list of all documents and/or instruments relied on. Upon completion of report, the same shall be filed directly in court by Mr. Rodgers Gacewa, (Director of Surveys) for onward transmission to the other parties.

DATED AND DELIVERED AT NAIVASHA VIA TEAMS MICROSOFT THIS 22ND DAY OF JANUARY 2026.

M.C. OUNDO

ENVIRONMENT & LAND COURT – JUDGE

